

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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MATTHEW L. LOTT,

Plaintiff,

Case No. 1:20-cv-1255

v.

Hon. Hala Y. Jarbou

CORIZION, et al.,

Defendants.

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**ORDER**

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. This matter is presently before the Court on Plaintiff's notice of appeal. (ECF No. 41).

By order and judgment entered May 5, 2022, the Court dismissed Plaintiff's remaining claims. Eighty-one days later, the Court received from Plaintiff a request for a form so that he could pursue an appeal. (ECF No. 40.) Effective August 15, 2022, Plaintiff filed a notice of appeal.<sup>1</sup> (ECF No. 41.)

Under 28 U.S.C. § 2107 and Federal Rule of Appellate Procedure 4, a notice of appeal must be filed within 30 days after entry of the judgment or order appealed from. Plaintiff's notice was late. The statute and rule authorize an extension of the deadline, but only if the motion for extension is filed not later than 30 days after the original deadline. Even if the Court construed

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<sup>1</sup> The notice of appeal followed a circuitous path to this Court. Plaintiff filed the notice initially in the Michigan Court of Appeals. That court received the notice on August 11, 2022. (Notice, ECF No. 41, PageID.260.) The state court of appeals forwarded the notice to the Sixth Circuit Court of Appeals the next day. (Aug. 12, 2022, Corr., ECF No. 41, PageID.261–262.) The Sixth Circuit received the notice on August 15, 2022. (Id.) The Sixth Circuit transmitted the notice to this Court on August 24, 2022.) (Aug. 24, 2022, Corr., ECF No. 41, PageID.263.) The notice was docketed as of the date it was received in the Sixth Circuit Court of Appeals.

Plaintiff's first post-judgment correspondence on July 25, 2022, postmarked July 22, 2022, as a motion for extension, it was filed too late for this Court to provide any relief. The statute and rule also provide for reopening the window to file a notice of appeal if: (1) Plaintiff did not receive notice of the judgment within 21 days of its entry; and (2) no party would be prejudiced. There is nothing in Plaintiff's July 2022 communication with the Court or in his notice of appeal that suggests Plaintiff did not timely receive notice of the judgment.

Plaintiff was granted leave to proceed *in forma pauperis* in this Court. Under Federal Rule of Appellate Procedure 24(a)(3), Plaintiff would be permitted to continue that status on appeal unless this Court certifies that an appeal is not taken in good faith. That provision is simply a specific example of the prohibition in 28 U.S.C. § 1915(a)(3), which provides "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." Magistrate Judge Phillip J. Green, in his report and recommendation, found that an appeal would be frivolous and, therefore, would not be filed in good faith. (R&R, ECF No. 34, PageID.244.) The Court adopted the report and recommendation as the opinion of the Court. (Order, ECF No. 38.) The determination that an appeal would be frivolous is only bolstered by the fact that the notice of appeal was filed too late. Plaintiff is not eligible to proceed *in forma pauperis* on appeal.

Plaintiff has twenty-eight (28) days from the date of entry of this order to pay the entire filing fee for appealing a civil action, which is \$505.00, to the Clerk of this Court. Alternatively, Plaintiff may file a motion for leave to proceed *in forma pauperis* in the Court of Appeals pursuant to the requirements set forth in Fed. R. App. P. 24(a)(5). Plaintiff's failure to comply with the order may result in dismissal of this appeal without prejudice by the Sixth Circuit Court of Appeals for want of prosecution.

Accordingly,

**IT IS ORDERED** that Plaintiff is **DENIED** leave to proceed on appeal *in forma pauperis*.

Dated: August 31, 2022

/s/ Hala Y. Jarbou

HALA Y. JARBOU

CHIEF UNITED STATES DISTRICT JUDGE

**SEND REMITTANCES TO:**

Clerk, U.S. District Court  
399 Federal Bldg.  
110 Michigan St., N.W.  
Grand Rapids, MI 49503

**All checks or other forms of payment shall be payable to “Clerk, U.S. District Court” and must indicate the case number in which the payment is made.**